*** THE HON'BLE MR JUSTICE B.SUDERSHAN REDDY**

*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 13060 of 2004

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% 24-08-2005

Hedaplast Industries, 18-15-3, Chandrayanagutta X roads, Hyderabad rep,, by its Proprietor Mr.Brijgopal Heda.

….Petitioner

Vs.

$ 1. Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad and two others.

Respondents

! Counsel for the Petitioner: Mr. S.R.Ashok.

^ Counsel for respondents: Special Standing Counsel for Commercial Taxes.

< Gist:

>Head Note

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127 STC 227

[2] 24 APSTJ 129

[3] (2002) 2 Supreme Court Cases 127

[4] (2004) 3 Supreme Court Cases 488

[5] (2004) 6 Supreme Court Cases 719

[6] 2005 (181) E.L.T. 364 (S.C.)

[7] (1999) 237 ITR 889

8 (1986) 158 ITR 102

[9] (1965) 56 ITR 198

[10] (1999) 112 STC 346

[11] (1993) 90 S.T.C.47

[12]AIR 1969 Supreme Court 267

[13]AIR 1976 Supreme Court 789

[14] (2001) 252 ITR 1

[15] (2003) 263 ITR 706

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.13060 of 2004 and 13152, 13153, 13154, 10484, 11894, 12394, 12395 and 12399 of 2005

Date: 24.08.2005

Between:

Hedaplast Industries, 18-15-3, Chandrayanagutta X roads, Hyderabad rep.,by its Proprietor Mr.Brijgopal Heda.

… Petitioner

and

1. Commissio er of Commercial Taxes, Andhra Pradesh, Hyderabad.
2. Deputy Commissioner (CT), Charminor, Hyderabad.
3. Commercial Tax Officer, Lad Bazar Circle, Hyderabad.

… Respondents.

THE HON'BLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.13060 of 2004 and 13152, 13153, 13154, 10484, 11894, 12394, 12395 and 12399 of 2005

COMMON JUDGMENT: (Per Sri Ramesh Ranganathan, J)

Petitioners, in these batch of writ petitions, question the authority of the

Commissioner of Commercial Taxes, to issue circular instructions, interpreting the Order passed by the Sales Tax Appellate Tribunal. The main contention in this regard is though the Commissioner of Commercial Taxes is not so empowered, even under Section 42-A of the Andhra Pradesh General Sales Tax Act, 1957 (APGST Act), his erroneous interpretation, places fetters on the Quasi Judicial powers exercised by statutory authorities under the APGST Act.

In order to examine the question raised in these writ petitions, it is sufficient if the facts in W.P.No.13152 of 2005 are taken note of. The petitioner, carrying on business of manufacture and sale of plastic water storage tanks at Visakhapatnam, is a registered dealer on the rolls of the Commercial Tax Officer, Visakhapatnam. It is the case of the petitioner that storage tanks are plastic containers falling under sub-Item (iv) of Entry 19 of the First Schedule to the APGST Act as amended with effect from 12-5-1997 and are exigible to sales tax at 4%. The Deputy Commissioner of Commercial Taxes, Visakhapatnam sought to revise the assessment order, for the assessment year 1998-99, bringing these plastic water storage tanks under entry 187 relying on the order of the Sales Tax Appellate Tribunal in T.A.No.270/93 dated 7-10-1996, wherein the question which arose for consideration was as to whether water tanks fell under “articles of plastic” or “water supply and sanitary fittings”, in relation to the assessment year 1990-91, which was for a period prior to insertion of sub-item (iv) of Entry 19 to the First Schedule of the APGST with effect from 12-5-1997. It is stated that, on being pointed out the distinction, the Deputy Commissioner passed the order, dated 22-8-2002, dropping further proceedings confirming the order of the Commercial Tax Officer assessing the plastic water storage tanks under Entry 19(iv) of the First Schedule to the Act.

The 2nd respondent issued two show cause notices, dated 9-2-2004 for the assessment years 2002-03 and 2003-04, calling upon the petitioner to submit its objections, if any, to his proposal to bring these plastic water tanks to tax under Entry 187 of the First Schedule purporting to follow the circular instructions of the Commissioner of Commercial Taxes (1st respondent) in reference No.AI (1)1658/2003 dated 27-12-2003. It is contended that, since the circular of the Commissioner of Commercial Taxes is binding on his subordinates, filing of objections before the 2nd respondent is a useless formality. Hence this writ petition. It is stated that since the previous Commissioner, in his letter dated 26-11-2002, addressed to the Accountant General, had clarified that the order of the Sales Tax

Appellate Tribunal in Premier Marketing Case applied only to the assessment period prior to 11-5-1997 and thereafter plastic water tanks were required to be classified under Entry 19(iv) of the First Schedule, in view of Amendment Act 30/97, it would not be open to his successor to take a contra view by his distorted understanding of the legal position. Reliance is placed on G.O.Ms.No.857 dated 9-12-1999, wherein the Government is said to have treated plastic containers as falling within the purview of Entry 19 of the First Schedule to the APGST Act, to submit that the contemporaneous understanding of the Government, as reflected in the statutory notification in G.O.Ms.No.857, cannot be given a go bye, by the Commissioner of Commercial Taxes, while issuing the circular.

A counter affidavit is filed by the 2nd respondent wherein it is stated that since show cause notices are subjected to challenge in these batch of cases, the writ petitions as filed are premature and are not maintainable. The evolution of Entry 19 and the amendments made thereto, from time to time, are dealt with in great detail. It is stated that the expression “all types of containers” under Entry 19(iv) is a species of the genus “packing material” and therefore any commodity, in order to fall under entry 19(iv), has to first answer the description of packing material. Reliance is placed on the judgment of this Court in **Commercial Plastics v. State of Andhra Pradesh** wherein this Court held that for the purpose of construing the provisions a taxing statute a commonsense meaning is to be applied and one of the tests laid down in this regard is as to how dealers or consumers would understand the meaning, and that words in a statute must be given their ordinary meaning since the words best declare the intention of the law maker. It is contended that the aforementioned judgment of this Court, which brought plastic bags within the ambit of Entry 187, would also apply to plastic water tanks, that Entry 19(iv) must be understood to mean all packing material, other than those mentioned under Entry 19(i) to (iii), and would therefore not take within its fold plastic and synthetic water tanks, and since these water storage tanks are made of plastic material, they continue to remain plastic articles requiring them to be classified under Entry 187 and not Entry 19(iv) of the First Schedule of the APGST Act. The counter affidavit is however silent with regards the circular instructions issued by the Commissioner and the 2nd respondent’s understanding of the scope and extent of the power conferred under Section 42-A of the APGST Act.

Sri S.R.Ashok, learned Senior Counsel, appearing on behalf of the

petitioners, submits that plastic containers were hitherto taxed under Entry 19 of the First Schedule to the Act until they were excluded from Entry 19, by Amendment Act 4/89, with effect from 15-2-1989 and that the Sales Tax Appellate Tribunal, in its judgment in **PREMIER MARKETING agencies Vs. state Of Andhra PRADESH**, had held that plastic water tanks were also used as industrial containers and therefore liable to be taxed as containers under entry 19 of the First Schedule of the APGST Act up to 15-2-1989 and thereafter under Entry 187 in view of the specific exclusion carved out in Entry 19 with effect from 15-2-1989. Learned Senior counsel submits that sub-item (iv), of Entry 19, after its amendment with effect from 12.05.1997, is comprehensive in nature dealing exclusively with containers, and a special entry applicable to all containers, including plastic containers and that the general entry of 187, which deals with all articles of plastic, including HDPE woven and laminated sheets, does not apply for the assessment periods subsequent to 12-5-1997. It is contended that the circular instructions of the Commissioner of Commercial Tax Officer, is oblivious of the statutory changes brought about by Amendment Act 30/97 and that reference, in the said circular, to the decision of the Sales Tax Appellate Tribunal in **Premier Marketing Agencies' case** (2 supra) is not applicable as the said decision, holding that synthetic water tanks were plastic articles covered by Entry 187 of the First Schedule, was rendered in relation to the assessment year 1990-91, prior to the amendment of Entry 19 by Act 30/97. It is further contended that the power to clarify various aspects, arising under the statute, is a power required to be exercised sparingly to avoid possible ambiguities, to provide relief to traders from the rigours of the statutory mechanism and that such a power should not be exercised to fasten liability on the traders contrary to the intent of the statute.

Learned Senior Counsel would submit that classification of goods are issues required to be considered by statutory authorities with reference to the statutory position obtaining on the relevant date and on the anvil of judicial precedents, that it was a quasi-judicial power, vested in the assessing, appellate and revisional authorities under the statute, which could not be usurped or derailed by the Commissioner under the garb of issuing circular instructions, and that such circular instructions cannot extend to interpreting relevant entries since they are matters beyond the scope of the powers vested in the Commissioner under Section 42-A of the APGST Act.

Learned Senior counsel would submit that the power conferred on the Commissioner, under Section 42-A of the APGST Act, is only for the proper administration of the Act and can neither extend to interpretation of statutory provisions nor can it be exercised to create a charge or enhance the tax liability of a dealer. It is contended that even if such wide powers are to be read into Section 42-A, it would not be open to the 1st respondent to issue circular instructions giving a distorted interpretation of judgments of Courts/Tribunals, which interpretation would bind his subordinates in view of the statutory prescription under Section 42-A, rendering the very provision of assessment and the remedy of appeal, prescribed under the statute, illusory and redundant.

After referring to the judgment in **Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries,** wherein it was held that regardless of the interpretation placed by the Supreme Court, on a phrase in an exemption notification, circulars issued by the Central Board of Excise and Customs which placed a different interpretation upon the said phrase, would be binding upon the revenue, learned Senior Counsel would submit that subsequently, in **Commissioner of Customs, Calcutta Vs. Indian Oil Corporation Ltd.,** a two-Judge bench of the Supreme Court, after referring to the decision in **Dhiren Chemical** case (3 supra), had held that the law declared by the Supreme Court was binding on all the Tribunals and authorities, that any contrary view given thereto by the circulars of the board, would amount to transgression of a constitutional mandate while adhering to a statutory mandate, that instructions issued by the superior authorities on the administrative side would not fetter exercise of quasi-judicial powers and that the statutory authority invested with such power had to act independently in arriving at a decision under the Act. Learned Senior Counsel would contend that the law laid down in **Dhiren Chemicals** case (3 supra), as interpreted in **Indian Oil Corporation** case (4 supra), is alone binding under Article 141 of the Constitution of India.

Learned Senior Counsel also refers to the judgment in **Kalyani Packaging Industry Vs. Union of India** wherein the Supreme Court held that the judgment in **Dhiren Chemicals** case (3 supra) could not mean that even in cases where the Revenue/Department had already contended that the benefit of exemption notification was not available, and the matter was sub judice before a Court or a

Tribunal, circulars of the Board would be given effect to in preference to a decision of the Constitution Bench of the Supreme Court, and that to hold otherwise would be to ignore a judgment of the Supreme Court and follow circulars of the Board and this was not what was meant in **Dhiren Chemicals** case. Learned Senior Counsel submits that since in **Commissioner of Central Excise.,Bolpur Vs. Ratan Melting & Wire Industries**. the earlier judgment in **Dhiren Chemicals** (3 supra) case has been referred to a larger bench of five judges, the impugned circular purported to have been issued under Section 42-A of the Act, cannot bind Courts, Tribunals or quasi judicial authorities under the APGST Act. Reliance is placed on the judgment of the Supreme Court in **UCO Bank Vs. Commissioner of Income Tax** wherein it was held that circulars can neither pre-empt judicial interpretation of the scope and ambit of a provision of the Act nor could it impose on the tax payer a burden higher than what the Act itself, on a true interpretation, envisages, that the task of interpretation of the laws is the exclusive domain of Courts and the power to issue circulars is merely to tone down the rigour of the law for the benefit of the assessee and to ensure proper administration of fiscal statutes.

In support of his contention that circulars, even though they do not have statutory force, are nonetheless binding on departmental officials including those exercising quasi-judicial functions under the Act, learned Senior Counsel refers to the judgments in **State Bank of Travancore Vs. Commissioner of Income Tax, Kerala** wherein the Supreme Court held that Circular instructions are executive in character and cannot alter the provisions of the Act and in **Navnit Lal C.Javeri Vs. K.K.Sen, Appellate Assistant Commissioner of Income Tax, Bombay** wherein it was held that the circulars issued by the Central Board of Revenue would be binding on all officers and persons employed in execution of the Act.

Learned Counsel places reliance on the judgment in **B. Arunkumar Trading Private Limited Vs. Commercial Tax Officer, Kurupam Market Road, Visakhapatnam** wherein, after referring to Sections 42 and 42-A of the A.P.G.S.T. Act, this Court held thus:-

"From bare reading of the two provisions of the Act it becomes clear that the Government has no power whatsoever to interpret the statute in a vacuum and ask the assessing authorities to make assessments in accordance with the interpretations placed by the Government through a Government order on a statute. Assessing authorities, appellate authorities and the revisional authorities under the Act are performing quasi-judicial functions and it is in each and every case that these authorities are expected to pass

objective orders while interpreting the provisions on their own. One can understand if an order is passed by the assessing and it is subjected to an appeal or revision and the Commissioner or the Government passes an order while exercising those powers in a specific matter. In such a situation, such authority may place an interpretation on a statute different from the interpretation placed on it by the assessing authority. But, in our view, the Government order which has been issued without any power whatsoever under the Act. Therefore, the order dated September 16, 1997 passed by the Government is *ultra vires* the Act……"

Learned Senior Counsel contends that since circulars, issued under Section 42-A, even when they infringe on the jurisdiction of quasi-judicial authorities to independently determine the matter before them, are binding on such authorities, the scope of Section 42-A should be restricted to matters other than those which are within the exclusive and independent jurisdiction of these statutory authorities under the A.P.G.S.T. Act.

Sri A.V.Krishna Koundanya, learned Special Standing Counsel, appearing on behalf of the respondents refers to the proviso to Section 42-A to contend that circular instructions issued by Commissioner are not meant to interfere with the discretion of any appellate authority in exercise of its appellate powers and would not, in any manner, place fetters on the quasi-judicial powers of an appellate authority under the statute. Learned counsel submits that while Section 42-A empowers the Commissioner to issue circular instructions, such power is not exercised in a manner inconsistent with the provisions of the Act, and even if it were to be so exercised it would not be binding on the assessing/appellate/revisional authorities under the APGST Act.

Reliance is placed on the judgment of the Supreme Court in **Bengal Iron Corporation Vs. Commercial Tax Officer** wherein it was held thus:

"So far as Clarifications/Circulars issued by the Central Government and/or State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the courts. It is true that those clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law. There can be no estoppel against the statute. The understanding of the Government, whether in favour or against the assessee, is nothing more than its understanding and opinion. It is doubtful whether such clarifications and circulars bind the quasi-judicial functioning of the authorities

under the Act. While acting in quasi-judicial capacity, they are bound by law and not by any administrative instructions, opinions, clarifications or circulars. Law is what is declared by this Court and the High Court- to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive……..”

Learned counsel would submit that every circular issued by the Commissioner, in matters of internal administration, cannot be treated as having been issued under Section 42-A of the Act, since the power to issue administrative instructions to his subordinates, as the head of the Commercial Tax Department, inheres in him. Learned counsel submits that such circulars, not referable to Section 42-A, are not binding on statutory authorities discharging quasi-judicial functions under the Act.

As the stand of the respondents, regarding the nature of the circular, impugned in the writ petition, was not reflected in the counter affidavit filed by the second respondent and as the first respondent had not filed his counter affidavit, this Court on 10.08.2005 passed the following order:-

“The Circular in CCT’s Ref.No.A1(1)/1688/2003, dated 27.12.2003 is impugned in these writ petitions on various grounds. The petitioner in the affidavits filed in support of the writ petitions specifically at more than one place asserts that the said Circular has been issued by the Commissioner of Commercial Taxes in exercise of statutory power conferred upon him under Section 42-A of the Andhra Pradesh General Sales Tax Act, 1957 (short “the Act”). The counter-affidavit filed on behalf of the respondents has been sworn to and signed by the Deputy Commissioner of Commercial Taxes (Legal) in the office of the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad. The counter-affidavit is significantly silent as to whether the impugned Circular has been issued by the Commissioner of Commercial Taxes in purported exercise of the power under Section 42-A of the Act.

We have elaborately heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Special Standing Counsel for the Department.

In our considered opinion, it is just and necessary that the Commissioner of Commercial Taxes is required to file an affidavit in this matter adverting to the specific question as to whether the impugned Circular has been issued by him in exercise of power conferred under Section 42-A of the Act. Liberty is given to the Commissioner to clarify or add anything to what has been stated in the counter-affidavit filed by the Deputy Commissioner. The affidavit should be filed within one week from today.

Post these writ petitions on 17.08.2005 as part-heard.”

Pursuant thereto, the Commissioner of Commercial Taxes filed his counter affidavit

wherein it is specifically stated that the circular, in reference AI(1)/1688/2003 dated 27.12.2003, was merely an internal communication, meant for all subordinate officers, only to clarify the issue regarding tax liability of Plastic Water Storage Tanks, that it was not issued under Section 42-A of the A.P.G.S.T. Act and was a communication issued by the Joint Commissioner (S.T), after obtaining permission of the Commissioner (C.T).

Since the 1st respondent has, in no uncertain terms, stated that the impugned circular is not referable to Section 42-A of the A.P.G.S.T. Act., it is unnecessary for us to examine the scope, extent and content of the powers conferred on the Commissioner, under Section 42-A of the Act. While the several contentions raised by the learned Senior Counsel Sri S.R. Ashok, regarding the nature of circulars which could be issued under Section 42-A of the Act and the restrictions placed by the statute on such powers, undoubtedly have substantial force and merit serious consideration, all these issues are left open for determination in an appropriate case wherein these questions actually arise for consideration. Suffice to state that this Court would not examine academic issues, which are unnecessary for the purpose of a decision in a given case.

The only question which remains for consideration is whether, dehors Section 42-A of the Act, a circular, such as the one impugned in this writ petition, could have been issued by the 1st respondent. Sri S.R.Ashok, learned Senior Counsel, placing reliance on judgments of the Supreme Court in **Gujarat Electricity Board Vs. Girdharlal Motilal**; **Hukam Chand Shyam Lal Vs. Union of India** and **Commissioner of Income Tax Vs. Anjum M.H.Ghaswala** wherein it was held that when a statute vests certain power in an authority to be exercised in a particular manner then that authority has to exercise it only in the manner provided in the statute itself, submits, in our view rightly so, that since the power to issue circulars instructions is conferred only under Section 42-A, of the Act and no such power or authority is available to the Commissioner to issue circulars other than under Section 42-A, circulars, such as the one issued by the 1st respondent, is without authority of law and is liable to be set aside. Learned Senior Counsel refers to the judgment in **Union of India Vs. Azadi Bachao Andolan** wherein the Apex Court held that the restriction on the power to issue circulars was to prevent interference

with the course of assessment of any particular assessee. It is no doubt true, as rightly contended by the learned Special Standing Counsel, that the power to issue administrative circulars/instructions inheres in the 1st respondent as the head of the department of Commercial Taxes. Such an inherent power is, however, available only for ensuring effective administration and proper functioning of the department and cannot extend to interpreting orders of Courts and Tribunals, as these are all matters required to be examined and adjudicated by the statutory authorities discharging Quasi-Judicial functions under the Act.

Learned Special Standing Counsel fairly submits that the impugned circular would not bind Quasi Judicial authorities under the Act and is not even meant to do so. One cannot, however, ignore the fact that the statutory authorities under the A.P.G.S.T. Act are officers administratively subordinate to the Commissioner of Commercial Taxes and while, in law, such circulars would not bind them, there undoubtedly exists a reasonable possibility of their being influenced by such orders/circulars issued by the Commissioner. Since the exercise of this power, is admittedly not under the provisions of the A.P.G.S.T. Act, the impugned circular of the 1st respondent, dated 27-12-2003, clarifying/interpreting the order of the Sales Tax Appellate Tribunal, is without authority of law and is accordingly set aside.

The consequential orders, under challenge in this writ petition, are the show cause notices issued by the 2nd respondent dated 09.02.2004. Since it is not the case of the petitioner that the said show cause notices are without jurisdiction or are tainted with malice, the 2nd respondent may continue the proceedings, consider the matter on its own merits and in accordance with law.

Writ petitions are accordingly disposed of.

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B. SUDERSHAN REDDY, J

Date: .08.2005

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RAMESH RANGANATHAN, J

MRKR/ASP